C482 No. 222 of 2002

Hon'ble Irshad Hussain, J.

Heard Sri Arvind Vashistha, on behalf of Sri Ram Ji Srivastava, learned counsel for the petitioners and the learned A.G.A.

By the petition under Section 482 Cr.P.C. summoning the order passed by the C.J.M. Dehradun on 23.5.2002 has been challenged. It is apparent that neither the power of the Magistrate u/s 205 Cr.P.C. was invoked nor any revision was filed u/s 397 Cr. P.C. before the learned Sessions Judge against the impugned order. The petitioners have straight forward came to the court although as held by the Hon'ble Supreme Court in the case of K.M. Mathew versus State of Kerala and another, 1991-(SC2)-GJX-0629-SC, the court has power to drop the proceedings against the accused even after the accused was summoned to stand trial for any offence. The petitioners accused were, therefore, entitled to avail such right to approach the learned Magistrate by preferring a protest petition against the summoning order instead of filing the petition u/s 482 Cr.P.C. before the High Court in the first instance. As mentioned earlier there was also

another remedy to file the revision before the Sessions Judge. Considering these aspects, it will not be proper to entertain the petition and the same is hereby dismissed.

However, the petitioners are at liberty either to file a protest application against the summoning order before the C.J.M., Dehradun or may file a revision before the Sessions Judge subject to the period of limitation and availing benefit of section 5, if there need be to seek condonation of delay.

(Irshad Hussain, J.)

23..07.2002
M.P.S.